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GENERAL COUNSEL'S OPINION NUMBER 59-7(a), DATED 12 NOVEMBER 1959

Upon performance of travel, the rights of the traveler as well as those of the Government, become fixed and vested and may be neither enlarged on nor diminished retroactively by administrative action, whether in the form of a travel order or a regulatory amendment. Therefore, except to correct or complete travel orders to show intent at the time they were issued, they may not be revoked or modified retroactively so as to increase or decrease rights which have accrued and become fixed under applicable statutes, regulations and orders for travel already performed.

Travel already ordered but not yet performed may be affected by changed or unanticipated conditions and usually there could be no objection under such circumstances to the prospective modification of the original orders.

TO THE CHIEF, FINANCE DIVISION

1. We have your memorandum of 30 October 1959 requesting our opinion of the legality of the amendment of travel orders to change the status of Mr. M.G.N. from PCS to TDY. Our reply follows.

2. It is a settled rule of law, stated many times by this Office and by the Comptroller General, that upon the performance of travel, the rights of the traveler, as well as those of the Government, become fixed and vested and may be neither enlarged on nor diminished retroactively by administrative action, whether this be in the form of a travel order amendment or a regulatory amendment. See 23 Comp. Gen. 713 and 35 Comp. Gen. 124. Travel already ordered but not yet performed may be affected by changed or unanticipated conditions, and usually there would be no objection under such circumstances to payment of appropriate travel benefits based on the prospective modification of the original orders. However, except to correct or complete travel orders to show intent at the time they were issued, they may not be revoked or modified retroactively so as to decrease or increase rights which have accrued and become fixed under the applicable statutes, regulations, and orders for travel already performed.

3. The status of an individual as related to his statutory and regulatory entitlement to travel perquisites is a question of fact. Under an ideal administrative arrangement, travel documents would always coincide with the facts. Because of human failings they do not always do so. It is for this reason that travel order amendments are permitted in order to reflect the intent behind the issuance of the original order. Things being thus, a travel order is not to be considered conclusive of the factual status of an individual traveler, but it is necessarily of great weight. However, as we have said, where the accuracy of the travel order in reflecting the original intent is put into question, it is to the facts in the record that one must turn.

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4. In our opinion, borne out by a review of the file and a conference with a division representative, the following are the facts of this case:

(a) A PCS travel order was issued for the individual on 17 April 1959. This order precisely corresponds with the intent of the issuing authorities.

(b) The traveler left F. on 25 July and reported to Washington 17 August 1959. He was still under PCS orders when he reported to his PCS post and assumed his duties there.

(c) At the time he reported to his PCS post he had not been assigned elsewhere nor had any final plans been completed to assign him elsewhere.

(d) Both before he left F. and while he was en route to Washington, there were discussions here and with the field with regard to his suitability for assignment as Chief of Base, A.

(e) Until, and for a time after, he reported to his PCS post, he had the opportunity to express his desires for future assignment and to refuse the one being considered for him at that time.

(f) The decision to transfer him to A. was made official and final only after the individual had taken up his duties at his PCS post.

(g) The decision, when made, was to transfer him some two months subsequent thereto.

(h) The transfer, in fact, took place two months later.

(i) A travel order amendment attempting to place the traveler on TDY from 17 August was issued on 14 October.

5. In summary, we see that this individual was ordered into a TDY status retroactively to a PCS post at which he had been serving for nearly two months. The fact that there was a panel decision approving a future assignment and that this is a "direct assignment" case does not mean that the assignment was in all respects final. As we understand it, the main characteristic of a direct assignment is that the individual's prospective field superior need not approve it. The panel action does not mean that the DD/P may not disapprove it or that the man himself may not be granted the privilege of declining it. In the instant situation there was no positive final change of official position with respect to this individual until after his PCS transfer was completed. An employee cannot be placed in a TDY status at his PCS post, thereby generating per diem payments.

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6. It follows from the above that no retroactive change of travel orders can be made which would entitle Mr. N. to per diem payments for any period of time already elapsed nor can there be any change divesting him of his positive legal right to be reimbursed for those expenses regarding dependents, household effects, and so forth, properly incurred under a PCS travel order properly issued.

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